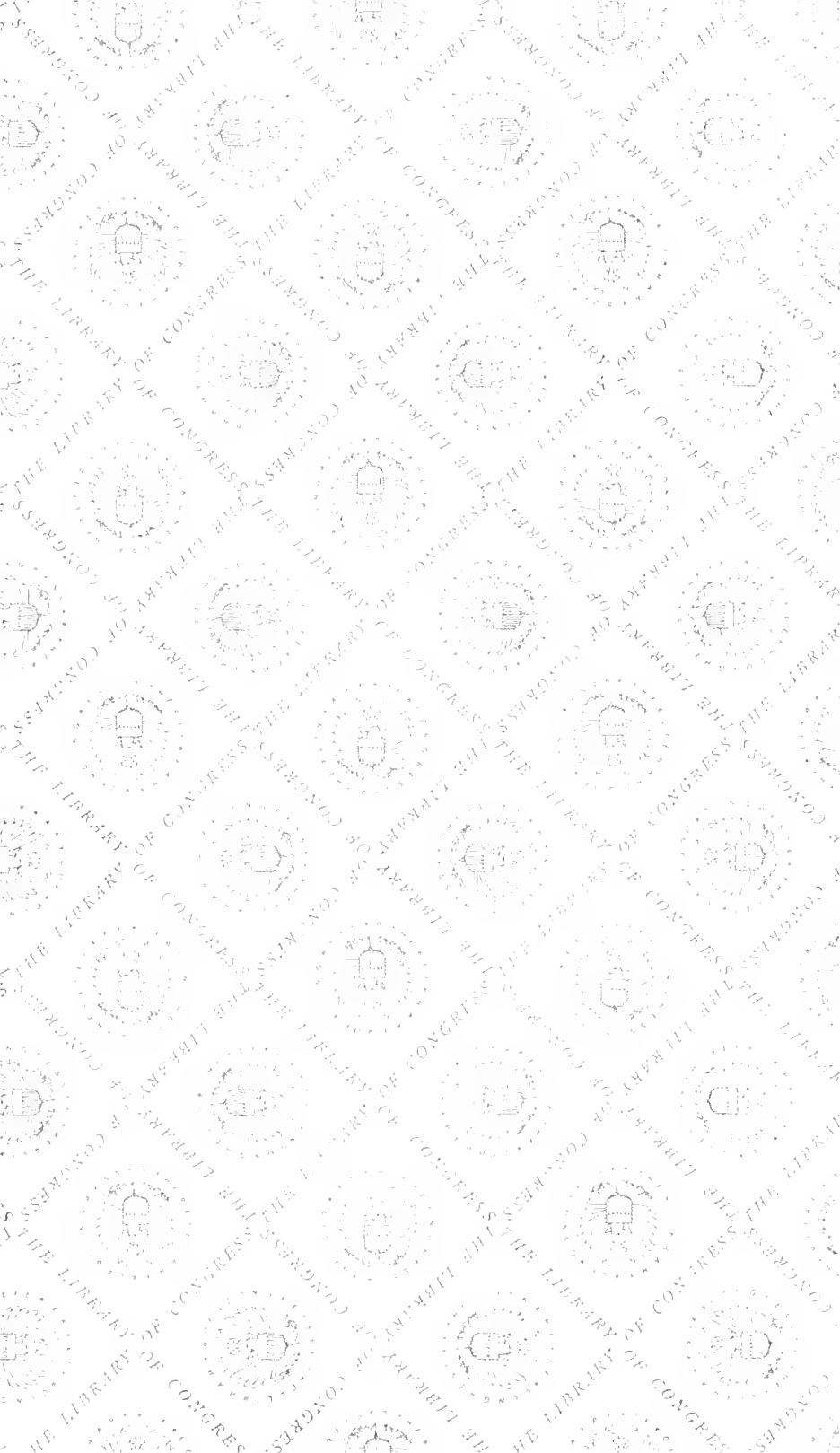


F

685

.D76





THE KANSAS ISSUE.

REMARKS

OF

HON. JAMES F. DOWDELL, OF ALABAMA,

IN THE HOUSE OF REPRESENTATIVES, MARCH 10, 1853,

Advocating the necessity of additional guarantees for the protection of southern rights.

The House being in the Committee of the Whole on the state of the Union—

Mr. DOWDELL said:

Mr. CHAIRMAN: It is not my purpose to detain the committee at this time, by a consideration of all the points involved in the Kansas question. Under the rule, I will not have the time, did I so desire. But I do not desire it. The subject has been freely and fully discussed for the last four years. The country is in possession of all the facts and all the arguments. It remains for us to pronounce the decision. What the judgment of Congress will be, I know not; but of its results I propose to say a few words. Before proceeding to speak, however, upon this great and leading question, I will briefly allude to another subject which has occupied largely the public attention, and is intimately connected with the public interests. In some form its consideration will become, at an early day, the duty of the House. Not by any means underrating its importance, I simply allude to it for the purpose of protesting against an assumption of power of dangerous precedent exercised in the arrest of William Walker and his followers, by our naval forces, on foreign soil. The act was in violation of laws, the strict observance of which is of the utmost importance to the peace of the country, and a regard for the rights of its citizens. It was the duty of the Executive to enforce observance to the neutrality laws, to prevent illegal expeditions being fitted out and carried on against foreign nations, with whom we are at peace. No good citizen can complain of his discharge of this duty, whatever opinion may be entertained of the wisdom of those laws. They do not, nor were they designed to, interfere with the right of an American citizen to expatriate himself—to emigrate with his arms in his hand. Even illegal expeditions, when within the jurisdiction of a foreign Government at peace with us, are beyond the reach of this Government. The act of arrest was not only a "grave error," but the exercise of power unauthorized, and demanded signal rebuke. The purity of mo-

tive, however it may palliate the offense of the individual in the court of conscience, cannot cure the violation of law, restore the losses of the injured, nor avert the danger of the precedent.

With these words I leave this subject for the present, and pass to another, more immediately demanding our attention, which I regard to be of the gravest character. No more important subject can be presented for our action than the admission of a sovereign State into our political Union. To the case now before us additional importance attaches, because of violent opposition, and the danger of results involving the peace of the country and the integrity of the Republic. States have been refused admission upon their first application. The postponement, although inconvenient, did not disturb the operations of the Government, nor interrupt the harmony of our relations. The cause of refusal was not violative of the spirit and fundamental condition of union. Therefore no serious consequences followed. The reason offered by the opposition for refusing to admit Kansas with the Lecompton constitution, strikes a blow at the rights of all the slaveholding States. Before venturing upon a decision of such momentous magnitude, it becomes us well to deliberate.

In the history of all Governments, no principle is better established than that a *division of power is essential to the preservation of liberty*. Political power, wherever located, under any form of government, unrestrained, is despotic. It matters not whether lodged in the hands of one, a few, or many; only in the latter it is the more dangerous. A monarch, with a conscience to restrain him, might relent, hesitate, stop short of his victim; majorities never. Without souls or consciences, they would pursue their purposes and their victims to the bitter end. The founders of our system, well understanding this truth, attempted to frame a government of divided power, with such checks, balances, and limitations, as would effectually guard the weaker against encroachment from the stronger, and forever prevent the concentration of power in any of its departments.

For all the ordinary ends and purposes of society, this has been achieved. The system is found to work admirably in practice. The three great departments of Government, the legislative, executive, and judicial, have been kept distinct and independent. Neither House has infringed the rights and privileges of the other. Nor has the executive power been enlarged at the expense of the legislative or judicial. All this granted—the great departments are in the possession of all the power bestowed on each by the Constitution—and further, that the States, in their separate jurisdictions, hold their reserved rights and powers intact: let me ask, of what benefit to public and private liberty becomes our beautiful theory of a Confederacy, with its checks and balances between State and Federal authority, the division of power between the different departments of each, if, by a combination of States, all these departments of power, executive, legislative, and judicial, should pass into the hands of a majority, become united, and wielded in a line of policy hostile to the rights of the minority? Of what avail, I repeat the question, with this state of facts, are paper constitutions to the protection of the minority, however admirably they may be contrived, or stringently guarded, without power is conceded to negative aggressive legislation? Do not our systems of government, State and Federal, with their multiplied limitations upon power, demonstrate the aim of our fathers to have been to guard the rights of individuals and minorities against the tyranny of majorities? And will not this design be totally thwarted, and our constitutional Government be essentially changed, by a permanent combination of a majority of the States with strength sufficient to hold and control all the powers of Federal legislation? Most assuredly so. And especially is it true, when the cause and continuance of such combination spring from hatred and hostility to an institution peculiar to the minority. And it may be added, the more dangerous because of geographical distinction.

In this connection the reply may be given, that the proposition is an impossibility under our present form of government, because the Constitution positively prohibits a State "to enter into any agreement or compact with another State." This is true, and yet my proposition does not fail. No two or more States may formally enter into any agreement or compact against another State; and yet, through the agency of the Federal Government, a majority of the States may *effectually* combine, hold possession of all the departments, and with the facility of construction common to aggressors, torture the meaning, without altering a letter of the Constitution, so as to most grievously oppress the minority. Thus it will be seen how we may be oppressed, and how easily the spirit of the original compact may be extinguished whilst its beautiful body remains. The next question is, will this dangerous combination be made? Are there any signs of such approaching madness?

Mr. Chairman, we all know the power and influence of party associations. Those who march under the same banner are always friends when an enemy is before them in the field; the stronger the antagonist, and the more desperate the encounter to be met, the stronger are the ties of union, and the warmer the sympathies of friendship. After the battle, the common joy of vic-

tory, or commiseration over defeat, cements more closely the bonds of fellowship. The cry of the old Shibboleth, with all its exciting associations in the past, will rally the clansmen long after the objects of combination have passed away. In this country numerous instances can be cited where political party feelings have proved superior to the ties of personal friendship, and party animosities have destroyed kindred and church relations. Notwithstanding the strength and stubbornness of this feeling, dividing and swaying the masses of our countrymen, controlling the operation of the Government from the beginning, who has not seen strong national parties go down under the tread of sectional columns—bonds stronger than steel dissolve in the fires of sectional strife? But a few years ago the proud old Whig banner was triumphantly waving in a majority of the States, and the gallant leaders, with a patriotism as broad as the Union, commanded the love of their followers and the admiration of their opponents. They have passed away. The banner no longer floats upon the breeze. The voice of the multitude hailing it with loud acclaim is now hushed; no vestige remains. Not

"One rose of the wilderness left on its stalk,
To mark where a garden had been."

Sectionalism divided and conquered it. Such, too, was the fate of the American party. That organization, after a feeble attempt at nationality, even with the strong declaration for "the maintenance of the Union of these United States, as the paramount political good, or the primary object of patriotic desire," could not stem the waves of sectionalism. It passed as a shadow—fled away as a vision of the night. There was left but one great political association, whose professions and policy looked to the interests of the whole country—the last hope of the patriot. To its ranks were gathered the conservative of all sections. Whigs and Americans, who sympathized with us in the conflict with sectionalism, to this national standard were rallied. The battle was fought; we won the victory. Hope revived for a peaceful and glorious future to our country. Confidence in the strength of the Government and the perpetuity of our republican institutions was partially restored. How long to last? Ere the temporary fruits of victory are gathered, a cloud comes over us—the shadows of death settle upon the path. The steps of the destroyer are heard within our borders, and the spirit of dissension has fastened upon our vitals. Shall the national Democracy fall a prey to sectional jealousy? Shall the glorious old party of the Constitution, who, in peace and in war, have upheld the honor of the country and maintained the principles of republican liberty, go down in the shock of battle? Let this disaster overtake us, let this evil day come, and it will be followed by a long night of direful calamities. There will be left, I doubt not, in every northern State, patriotic men, devoted and true to the Constitution—many who would willingly lay down their lives for the constitutional rights of the South, I believe. But, overshadowed and borne down by a sectional majority in every State, they would be powerless for good.

Now, sir, under this state of facts, with the causes which have brought it to pass, let me ask, what security will the minority States have against oppression? If party cords, however

Q. 23-15-14
stubborn and strong; the cohesive iron bands of common interest; the ties of kindred blood, and personal friendship; the sacred and holy links of brotherly love, hallowed by the strong memories of the glorious past; if these, if all these, cannot withstand the dissolving fires of sectional hate, I repeat the question, what security is there against oppression? Do you point me to the checks, balances, and limitations of our federative system? to the constitutional declaration of rights, its definitions and prohibitions of power? These, sir, would snap asunder like the green withes wherein Samson was bound; "as a thread of tow is broken when it toucheth the fire." The power of construction could easily remove all these wholesome obstacles which fence the path of tyranny. They would bend to the desires of the majority, as the tall oaks to the sweep of the tempest. The history of mankind, the world over, proves it. Collisions only can be avoided by effectual limitations to power. There must be a potent voice to say, "thus far shalt thou go, and no further;" or else, "the waves will roll not back." Hitherto our system of government has furnished that check, and our Constitution spoken that voice. Hitherto obedience followed the command, and the "proud waves were staid." Did the spirit of the old Union live, liberty would live; State rights and private rights would be sacred, shielded against even the stealthy and insidious power of construction. But, sir, once let all the departments of the Government pass into the hands of a combined majority section; and, whether the united powers would be used aggressively or not, the Constitution would immediately lose its vitality, the distinctive conservative feature of our system be destroyed, and the minority would become dependent upon the capricious will of the majority States.

But suppose the majority, thus armed with power, disclaim all designs to injure—suppose them, for the time being, to be actuated by a love of justice: does this alter, in the least, the subject condition of the minority? To test the supposition, let us say we believe your professions sincere; you intend us no harm; you have the power, but will refrain from its exercise to our injury; what objection have you then, in the absence of evil designs, to submit to wholesome restraints upon that power? If you never intend to exercise it oppressively, give us the evidence by laying a portion of it down. If you refuse, however sincere may be your professions, we are warned, by the history of the past, to be on our guard. Equality between States, so essential to liberty, cannot long be maintained under an inequality between sections or combinations of States, unless the stronger be circumscribed in their powers. The dangerous state of affairs in which we find ourselves was clearly not contemplated by the fathers of the Republic, or else, with their intense opposition to centralized power, they would have guarded against it. The fears of our predecessors, soon after this Government went into operation, were aroused to this danger, and herculean efforts have been made to prevent disaster to the system by preserving equality between sections. The struggle has been a fierce one. With this view, for a long period, States have been admitted in pairs—a slaveholding and a non-slaveholding together. The equilibrium has thus been maintained up to

a very recent period. The admission of California, in 1850, turned the scale against the South. Up to the time of that compromise we were safely guarded against encroachments. The Senate stood like a mountain in the path of the aggressor. By the admission of California we lost the balance—both the great legislative departments passed into the hands of the free States.

Sir, holding this department of power, we could not, if we would, invade the rights of the other section; but we could prevent encroachments upon our rights. That important negative power, helpless to injure, mighty to protect, has been lost. We now stand relying for safety on national parties, and the *love of justice* which may remain in the bosoms of the majority. In ordinary times, these subordinate securities may prove beneficial; but we know they are as nothing in the path of avarice, ambition, and fanaticism. Parties are but the creatures of a day, the accidents of the hour. They are liable to change from constant occurring combinations, as new interests arise, or new whims are to be gratified. The *lovers of justice* have been too often driven by the wicked multitude to "mountains and deserts—to the dens and caves of the earth; have been doomed to wander about in sheep skins and goat skins, destitute, afflicted, tormented"—for us to rely solely upon this principle for protection. Something more than the mere love of justice in Governments, however civilized, is found necessary to prevent wrong. In framing the organic law, the people must be imbued with the wisdom and sense of right sufficiently great to part with a portion of their powers, and thereby extract the *teeth and claws of the lion* of authority; or else the weaker will, sooner or later, become a prey to the stronger. Whatever be the form of the government, this evil tendency in man, to usurp and wield power, must be provided against to escape tyranny.

If necessary, then, be laid upon a people whose interests are identical, to bridle power to preserve freedom, how much more urgent the reason for restraints upon a Government whose authority extends over large Territories, holding dissimilar and often antagonistic interests?

In thus contending, Mr. Chairman, for better safeguards to liberty than political parties can furnish, I do not mean to disparage the worth of the Democratic party. In all the sectional conflicts of the past, that party has given to the councils of the country men good and true, who have faithfully stood by the constitution. My own section, demanding only her just and equal rights under that instrument, have found in that noble party a trusty and faithful ally. Hitherto it has deserved, in maintaining its integrity, the confidence bestowed by the South. It is to be lamented that many have fallen in the battle; some have deserted the standard; distinguished leaders have wandered off, and united their fortunes with the enemy; but the party still lives, and, I am proud to believe, holds in the North a host of patriots with hearts still true to the right. Unwilling to despair of the Republic, I must hope that the little band, though weakened by desertions and depressed by the diminution of confidence, will, with the daring courage of noble hearts, bravely face the storm. In time, they may gather the pure and the good, and rally strength to save the Constitution from the hand of the destroyer. Whatever be our des-

tiny, the true men of the North will live long in the affections of the generous and patriotic sons of the South.

Mr. Chairman, I trust that I have shown to the committee the danger to our institutions of unrestrained majorities. I have not alluded to the increasing hostility between the two sections, to be gathered from legislative resolves and acrimonious articles in the public press, both religious and secular. The spirit of crimination and recrimination prevails to an alarming extent. From this source reasons could be multiplied leading to the same conclusion. But none are so blind as not to see that perils environ our position of the gravest character. With all my confidence in the Democratic party, and notwithstanding the hope expressed in its fidelity, I must still believe that some more potent and enduring check is imperatively demanded for our security against invasion. Upon this point, were any doubts left, my opinions would be confirmed by the bold declarations of a northern Senator, who is regarded the head and front of the Black Republican party; one who speaks the sentiments and shadows forth the designs of that infatuated organization. His philosophic eye discerns the condition of affairs and takes in the future. The boast of power which he makes discloses the dangers to which the minority are exposed. In a recent debate on the Army bill, the Senator from New York [Mr. SEWARD] said to the Senator from New Hampshire, [Mr. Hale:]

"I am very sorry that the faith of the honorable Senator from New Hampshire is less than my own. He apprehends continual disaster. He wants this battle continued and fought by skirmishes, and to deprive the enemy of every kind of supplies. Sir, I regard this battle as already fought. It is over. All the mistake is that the honorable Senator and others do not know it. *We are fighting for a majority of free States.* There are already sixteen to fifteen; and whatever the Administration may do—whatever anybody may do—before one year from this time we shall be nineteen to fifteen."

Mark well the language. These words were not delivered in haste. Coolly and deliberately uttered, they were the convictions of his judgment. I was in the Senate at the time, and heard them. To me it was a note of warning from the enemy. "We are fighting for a majority of free States;" "this battle is already fought;" "sixteen to fifteen;" and soon "nineteen to fifteen." If the rights of States and sections are to be respected, if the Constitution of the United States is to be regarded, let me ask the reason for the boast of a majority of free States. It is given in another speech of the Senator's. He said:

"I expect to see this Union stand until there shall not be the footstep of a slave impressed upon the soil that it protects, although that soil will be extended, for aught I know, from the North Pole to the Caribbean sea, as it has already extended from the Atlantic to the Pacific ocean."

Whatever opinions others may entertain, there remains upon my mind not the shadow of a doubt as to the action of a party with such sentiments, when they shall be clothed with the power to legislate. They will, in a majority, wield powers destructive of our rights and property. If designs dangerous and despotic are not meditated, let me again ask why the exultation at the "majority of free States," coupled with the expectation of seeing "no footstep of a slave upon the soil" of the country? And subsequently the same opinions were reiterated in a set speech by that Sen-

ator. Sir, this spirit of aggression will not stop at the seizure of all the common territory. Nothing short of universal dominion will satisfy its voracious appetite. The sight of ruined cities and desolated fields between the fanatic and his object will not arrest him in his wild career, nor curb the passion for conquest.

By virtue of the Constitution, interpreted by the highest judicial authority, the southern States have the right to carry their slave property and plant their institutions upon the common territories of the Union. This right must not be impaired, nor our progress and expansion impeded. The law now in force allows it; stern necessity in time will demand it; woe betide that people who shall, even under the forms of legislation, attempt to forbid its exercise. Sir, is there a man who doubts the attempt will be made, should the Black Republicans control the Government? Hatred to African slavery is their bond of union; its ultimate and entire suppression the corner-stone upon which they build. To this end, the declaration, "no more slaveholding States to be admitted into this Union." Not a Representative of that party would vote to admit a slaveholding State this day, however legal and regular her application. Were the slavery clause the only possible objection, it alone would be sufficient to control the action of their representatives in both branches of Congress. Thus stands the case now. The prospect of a change of opinion on the part of the representative will at once vanish, when it is known that the constituency behind are far in advance of the delegate in hatred to our institutions. To their fixedness of purpose and bitterness of feeling, intensified by fanatic religious zeal, may be added the motives of imaginary spoils to be reaped in victory, and supposed immunity from harm to themselves in the conflict. Under these circumstances, I must confess that I can imagine no probability of a change of opinion that will inure to the benefit of the South.

The rapid growth of Abolitionism, its power to dissolve national parties so unmistakably given, its present strength and bold attitude in Congress, and its constantly augmenting power, should teach the minority section to look to remedies, in addition to national parties, for their protection. The admission of Kansas, should she continue to be a slaveholding State, will not remedy the evil, nor materially alter the condition of things. The disparity between the two sections will not be diminished. Oregon and Minnesota come immediately after, if not before, to swell the majority of free States. Soon will follow Washington and Nebraska, Utah, and probably New Mexico. With this great probable preponderance of northern power, to be inflamed by the ruthless madness of a fiery fanaticism, to grow in its excesses by each succeeding victory, what remedy short of a change in the organic law can be found equal to the emergency? What other plan to be devised which will lead to a peaceful solution of our difficulties? Sir, appeals to patriotism, invocations of right and justice, the recounted memories of a common struggle for liberty, will fall upon the dominant majority like the voice of flattery upon the "dull, cold ear of death." These will not do; they are temporary expedients, vain and illusory. In the dark hour, party organizations, with professed devotion to national platforms, cannot

withstand the advance of sectional legions. With a fell purpose to uproot and trample upon the old landmarks of friendship, they come with the tread of the Behemoth and the blast of the hurricane. They propose by this interference with our domestic institutions, through a sectional organization controlling the *majority States*, to pervert our Constitution, one of whose main objects was "to insure domestic tranquillity, so as to inaugurate domestic violence."

Sir, the great patriot statesman of the South, Calhoun, who, whilst living, had no superior, and dead, leaves not his like behind, has placed upon record, after a life of the largest experience, the profound reflections of his matured judgment on this subject. He was devotedly attached to the Union, and he endeavored most earnestly to impress upon the minds of his countrymen the means for its preservation. He said:

"This spirit of fanaticism aims openly and directly at destroying the existing relations between the races in the southern section; on which depends its peace, prosperity, and safety. To effect this, exclusion from the Territories is an important step; and hence the union between the Abolitionists and the advocates of exclusion, to effect objects so intimately connected. All this has brought about a state of things hostile to the continuance of the Union, unless timely prevented."

After speaking of the inadequacy of a restoration of the Federal character of the Government to furnish a remedy, he continues:

"The nature of the disease is such that nothing can reach it short of some organic change—a change which shall so modify the Constitution as to give the weaker section a negative on the action of the Government."

Sir, the deliberate opinions of this profound thinker and wise statesman deserve something more than a passing thought. Every day since they were written their truth becomes more and more evident. A few more years in the same direction, and the "disease" of which he speaks, "unless timely prevented," will result in death to the body politic.

Mr. Chairman, although the admission of Kansas will not restore the equilibrium between sections, as before stated, our right decision of the question is none the less important. Be the result what it may, the vote will teach a most useful lesson, and go far to establish the truth of the position which I have assumed. I will not now review the course of this and the previous Administrations, or their agents, subsequent to the organization of this Territory, and preliminary to the formation of the constitution which is here presented. Many things have been done which do not meet my approval, and yet there is much to deserve the approbation of the South. The main fact that both the present Administration and its predecessor have unwaveringly supported the regular authorities of the Territory, and promptly suppressed faction and rebellion—have interpreted the Kansas-Nebraska act to mean that no power less than the constitution-making power can permanently fix and regulate their domestic relations, and thereby secured to the people of the South the right to carry and hold their property in the Territory—furnishes a good and sufficient reason for me to have given and to continue my support. Whilst, therefore, differing with the President in his reasoning upon the propriety and necessity of submitting the constitution, or any part of it, to the masses for ratification or rejection, I cheer-

fully accord to him patriotic motives, and fully concur in the conclusion at which he arrived. For the bold and manly tone of his last message, the just sentiments, the clear and unequivocal declarations of right, and the firm determination avowed to maintain the act of the Lecompton convention, he is justly entitled to the respect and gratitude of all good men in the Union. Did the same spirit animate the masses of our countrymen, the same opinions of, and regard for, constitutional law prevail throughout the North, the dangers to which I have adverted would be long postponed, if not entirely avoided. To accomplish this desirable end, a rapid and radical change must take place in northern feeling and opinion.

Mr. Chairman, the gentleman from New York, [Mr. HASKIN,] who preceded me, is mistaken in stating that the State of Alabama has passed resolutions condemnatory of Mr. Buchanan. They justly condemned the course pursued by Governor Walker, but expressed confidence in the President. His position, in his late message, has vindicated the wisdom of that confidence. I am truly sorry, that the gentleman and his associate Democrats, who oppose the Lecompton constitution, have placed themselves in the category with Governor Walker, and have not verified a like confidence expressed in their behalf by many in the South.

Kansas stands knocking at the door for admission. Were her slaveholding policy fixed, her entrance would not restore political equality to the South. But this policy is by no means permanent. Yet, because her constitution recognizes the right in her citizens to hold African slaves, so inimical is the feeling among northern Representatives to that institution, her admission is doubtful. This reason controls the entire Republican party. It is true, other grounds are also relied on; no one doubts, however, the chief objection with that party to be the slavery clause in her constitution. A part of the northern Democratic Representatives coöperate with the Republicans. They assert themselves to be influenced by another consideration; still they are found in a line with the enemy. In this crisis it is deeply to be regretted that all who do not make the slavery clause an objection are not found acting together. The question of submitting, by the convention, its work directly to the vote of the masses, is one only of expediency, about which there may be legitimately difference of opinion. Its decision belongs to the people of the State, not to Congress. Our inquiry extends only to whether the constitution be the will of the people legally expressed; whether there are in the State the requisite number of inhabitants, and whether the government is republican in form. The fact that a majority of the States admitted into the Union presented constitutions which had not been submitted to the vote of the masses, beyond all doubt settles the controversy that, with this question, we have nothing to do. To refuse a State admission for this cause—to require compliance with such a demand as a condition precedent to admission—would not be leaving them "free to act in their own way," but it would be the exercise of power not granted us by the Federal Constitution, and certainly in the very teeth of the act organizing the Territory.

Doubtless some confusion has arisen, from a misapprehension in the public mind as to the

force of the term *the people* when used in a political sense. When it is declared to be the intent of the Kansas act "to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way," does the term "people," here used, include all or a part of the inhabitants; those acting without legal form, or in accordance with law? Does leaving them "free to act in their own way" contemplate or warrant action in any sense, without legal forms? In my opinion, clearly not. It has been asserted that the convention, although legally assembled, is not the *master* but the *servant* of the people. Reference to the Constitution of the United States, and many of the State constitutions, satisfies me that both positions are false. A convention is neither the *master* nor the *servant* of the people. It is the potent voice of the people; or, to be more emphatic, it is, in the highest legal and constitutional sense, *the people*. "We, the people, do ordain," is the language of the Federal Constitution, spoken by the Federal Convention which framed it. "We, the people, do ordain," is the language of some of the State conventions which ratified it. It was not submitted to the masses of the Union, for, constitutionally, there is no such people; nor was it submitted to the masses of any one State. Yet *the people* both ordained and ratified it. What people? A representative people, a *people* in the republican sense of the term. Such is likewise the fact in regard to many of the State constitutions. The same term is used, "we, the people of the State, do ordain," and yet the constitutions adopted were not submitted to popular suffrage. Conventions assembled in accordance with law, are *the people* in an organized capacity. Now, shall we presume to violate the sovereignty of a State, by polling her masses to ascertain whether the voice spoken by her convention is the truly expressed will of the people? To do so, would be to exercise arbitrary power.

The people of Kansas have, in accordance with authorities duly constituted by Congress in the organic act, in accordance with the laws of her government, in conformity to the requirements of the Federal Constitution, in a line with numerous precedents of States of the Union, adopted for themselves, in their own way, a constitution republican in form. Shall we admit or reject her? In my humble judgment there is not the shadow of a sound reason for refusal. The Leocompton convention was a political body, duly invested with power to make and ordain a constitution. The discretion to refer its work back to the masses belonged to it exclusively. They saw proper to submit the most material portion. All the *bona fide* inhabitants qualified to vote were invited to express their opinions by their votes. An election was held, of which due notice was given, and a large majority of those voting indorsed the portion submitted. Those who refused to vote, according to every sound principle of law, are presumed to acquiesce—are bound by the decision. Otherwise, there is, through the ballot-box, no safety to constitutional liberty. To delay admission, to require her to reconstruct her organic law, will be to countenance a rebellious spirit in her midst which has denied the authority of her government from the beginning. The dividing line in that Territory, truly says the President, is "between those who are loyal to this govern-

ment, and those who have endeavored to destroy its existence by force and by usurpation."

The constitution presented is the expression of the sovereign will of the people who acknowledge the authority of law. Those who voted against it, under an unconstitutional act of the Stanton Legislature, were composed mostly of those who have uniformly resisted regular authority. To admit is to regard the will of the loyal and law-abiding; to reject will promote rebellion. If the Stanton Legislature had the legal right to alter the requirements of the convention, it had the power to repeal the constitution. The assumption of such a right reverses the whole theory of our Government. Its action, under the circumstances, was of no more authority than any other peaceable assemblage of citizens; and the voice of the people evoked cannot be regarded, because they speak only through legal channels.

There is a manifest tendency in the public mind to revolutionary ideas and doctrines. This growing impatience of legal and constitutional restraints—the thirst for something new and startling—is an evil omen of the times. The rapid progress of the spirit of change will, ere long, unless counteracted, place our dearest rights at the mercy of uncontrolled numerical majorities. The prevalent idea that a mere majority can, *at will*, assemble and change the organic law of a State, and that no legitimate restraints can be imposed upon their action, is at war with old republican ideas, and will lead to popular despotism. Another distinguished son of South Carolina, Hugh S. Legaré, now no more, on this point has most eloquently said:

"The restraints which modern society has imposed upon itself in the exercise of its sovereignty are only an acknowledgment of the fallibility of man. In our own republican institutions this self denial has always struck me as something sublime. All absolute power, if allowed to act on sudden impulses, will and must be tyrannical; nor does it signify in the least by what name it is called, except, perhaps, that the galling severity of the bondage is in proportion to the number of masters. In the true spirit of Christian humility, the most sublime of all virtues, the people have taken care that they shall not be led into temptation by that omnipotence which God alone may not abuse, and reserving to themselves ultimately an absolute control over their own destinies, have practically restrained the exercise of their sovereignty, by withholding from their agents some of its highest attributes."

Sir, I will not deny to the people their right, when assembled in their sovereign capacity, to modify and change their form of government. This right, asserted in the Declaration of Independence, was stationed outside of constitutions as an additional guard to the liberty, safety, and happiness of the people. But as "all changes in the fundamental laws of a State, ought to be the work of time, ample discussion, and reflection," it would be much safer to confine its exercise within the forms prescribed by the Constitution. For a government of a State to call into action the sovereign power, on ordinary occasions, contrary to a prescribed rule by the people, to say the least, is inexpedient. Such a procedure, in my judgment, can only be justified by the highest public necessity. I know that this responsibility has been assumed by some of the State governments, and in this manner New York, Indiana, Maryland, and others, have amended their constitutions, and no immediate evil results have followed.

But the fact that in all the State constitutions guards have been thrown around the amending

power, requiring concurring votes of successive Legislatures, and in many cases a majority of two thirds, and thereafter a ratification by the qualified electors, shows the opinion of the people to be adverse to sudden alterations, and that danger was to be apprehended at this point. Mr. Chairman, in this age, the danger to liberty is not in hampering majorities, but the opposite; not in restraining public opinion, but in giving a loose rein to its ebullitions and excesses. Sir, majorities can always take care of themselves; but private interests and minority rights appeal to limitations and restrictions upon power to protect them. The more tardy the process, the more cumbrous the machinery in effecting a change of the fundamental law, the greater the security to the citizen.

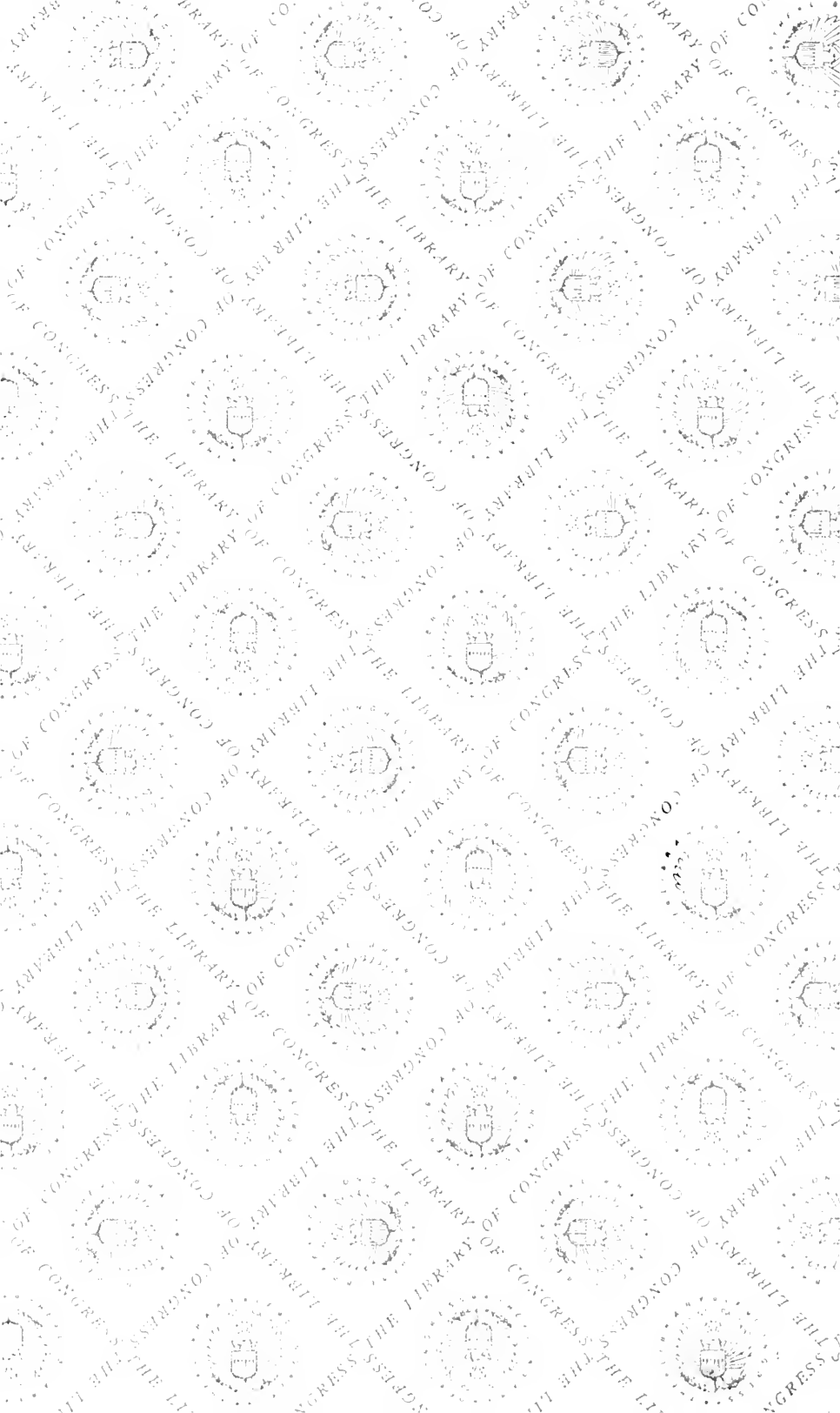
Objection is made by some to the admission of Kansas, because, in the schedule attached to her constitution, the Legislature is not authorized to call a convention for purposes of amendment until after the year 1864. Now, sir, whatever may be our individual opinions as to the wisdom and propriety of this provision, I humbly submit that Congress has nothing to do with this question—it belongs exclusively to the people of that State. But do those who object, remember that Indiana was admitted with a similar clause in her constitution, only the time-interdicting amendment was twelve years—just double that of Kansas. Who objected to her admission upon this ground! She was a free State. No one in the North, so far as I know, cared about the limitations which she imposed upon her government. But the *force* in the objection, in the present case, may be found in the fact that Kansas is a slaveholding State. Indiana, notwithstanding the limitation, changed her constitution before the time fixed had expired. Kansas, if she so desires, can do the same thing. I do not say that it will be wise in her people to do so. I believe it imprudent for any State to act differently from the forms prescribed in her constitution. But what is my opinion; what the opinions of all the members of this House? Has not a State the power to pursue her own policy; to carry out the wishes of her people "in her own way?" This clause in the constitution of Kansas does not change its republican form. We are not permitted to look for any other objection.

Mr. Chairman, the State of Alabama, whose people I have the honor in part to represent, by the unanimous voice of her Legislature has, in the event of the rejection of Kansas, authorized a convention to be called to determine her course of action. Taking her position by the side of the

State of Georgia, "she will and ought to resist, even (as a last resort) to a disruption of every tie which binds her to the Union, any action of Congress upon the subject of slavery in the District of Columbia, or in places subject to the jurisdiction of Congress, incompatible with the safety, domestic tranquillity, the rights and honor of the slave-holding States; or any act regulating the slave trade between the slave-holding States; or any refusal to admit as a State any Territory hereafter applying, because of the existence of slavery therein; or any act prohibiting the introduction of slavery into the Territories of Utah or New Mexico; or any act repealing or materially modifying the laws now in force for the recovery of fugitive slaves." Sir, to her I owe my allegiance. Whatever course she may in her wisdom pursue, as one of her sons, bound to her by every tie, in weal or in woe, I shall cling to her fortunes.

I will not disguise my feelings on this question. It is indeed painful to me to contemplate the *necessity* laid upon my State to invoke her sovereign power to resist aggression. Believing, as I solemnly do, unless some constitutional check be placed upon northern power—increasing daily in numbers, and in fanaticism—the minority States will be, at all times, liable to oppression, I heartily concur in the resolutions adopted by her Legislature. The time for action is at hand. Did I not warn my people of the dangers which threaten the overthrow of their rights, I should not be a faithful sentinel. That the deliberations of her convention when called, may result in some plan furnishing additional safeguards to liberty—protecting the rights of the South, without severing the bonds which unite the States, is my most earnest desire. To this end, limitations upon the powers of the *combined majority section* are *absolutely indispensable*. Those who profess to love the Union "may cry peace," at the passage of this or that measure, "but there will be no peace;" there will be, if I rightly comprehend the strength and designs of the Black Republicans, no cessation of hostilities; no pause in the march of aggression; no security for our rights, nor safety to the country, until this end be attained. The responsibility rests upon the majority section. Consenting to this necessary check upon their powers, they can restore harmony between the two sections—they can dry up the bitter waters of strife. Otherwise these dark waters will flow on until all the feelings of friendship are poisoned; all motives to union destroyed; and all the blessings that we now enjoy in common so richly, forever engulfed.

139



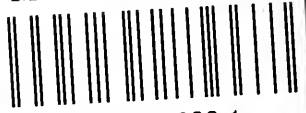


APR 70



N. MANCHESTER,
INDIANA

LIBRARY OF CONGRESS



0 016 085 233 1